Supreme Court of the United States.

No. 260.—October Term, 1906.

Hugh Wallace, Will Wallace, Verge Goodwin, et al., Plaintiffs in Error, *vs.* Mrs. Ella Adams, for herself and as Natural Guardian and Next Friend of Henry McSwain and Roma McSwain, her minor children.	In error to the United States Circuit Court of Appeals for the Eighth Circuit.

[February 25, 1907.]

Mr. Justice Brewer delivered the opinion of the Court.

This was an action commenced in September, 1904, by Mrs. Ella Adams, for herself and her minor children, defendants in error, in the United States Court for the Southern District of the Indian Territory, to recover possession of a tract of land in that Territory. Defendants answered, and upon trial judgment was rendered in favor of plaintiffs. This judgment was sustained by the United States Court of Appeals of the Indian Territory, and on further appeal reaffirmed by the United States Circuit Court of Appeals for the Eighth Circuit. 143 Fed. Rep. 716.

The case arises out of the legislation of Congress designed to secure the disintegration of the tribal organization of the Five Civilized Tribes in the Indian Territory, and the distribution of the property of those tribes among the individual Indians. A full resume of this legislation and the general litigation following it is to be found in *Stephens* v. *The Cherokee Nation*, 174 U. S. 445, and a full statement of the facts in this case is to be found in the opinion of the United States Circuit Court of Appeals. An entire restatement of these matters is, therefore, unnecessary.

There is but a single matter to be determined. As counsel for plaintiffs in error say:

"The assignment of errors presents but one question. If the decree of the Choctaw-Chickasaw Citizenship Court, in the test case known as the Riddle case, vacated the decree that defendant, Hill, had, theretofore, procured in the United States Court for the Southern District of the Indian Territory, wherein he was adjudged to be a member of the Choctaw tribe of Indians, this case should be affirmed. If it did not, it should be reversed."

To properly appreciate and rightly answer this single question some things in the history of the legislation and litigation and also some of the facts in this case must be noticed.

In order to divide the lands of these Indian nations an enumeration of the individuals entitled thereto became necessary. By the act of March 3, 1893, (27 Stat. 645, chap. 209, sec. 16,) the commission to the Five Civilized Tribes, generally known as the Dawes Commission, was empowered to negotiate and extinguish the tribal title to the lands and to make an allotment thereof to the members of the tribe in severalty. By that of June 10, 1896, (29 Stat. 339, 340, chap. 398) the commission was authorized to hear the application and determine the right of each applicant for citizenship in either of these tribes. The act also granted an appeal to the proper United States District Court in the Indian Territory to any party aggrieved by the ruling of the commission, and declared that the judgment of that court should be final. It required the commission to make a complete roll of the citizens of each of the tribes, to be "hereafter held and considered to be the true and correct rolls of persons entitled to the rights of citizenship in said several tribes." Hill, who is the principal defendant, applied to be enrolled as a citizen of the Choctaw Nation, and his application was finally sustained by the court, and he was, on March 8, 1898, adjudged to be a member of the Choctaw tribe by blood and entitled to be enrolled as such. The land in controversy was selected and taken possession of by him in reliance upon this adjudication of citizenship. On July 1, 1898, Congress passed an act (30 Stat. 591, chap. 545) granting to the tribes an appeal to the Supreme Court from the judgments of the United States courts of the Indian Territory in citizenship cases. Under the authority of this act many of these cases were appealed to this court, which affirmed the judgments. *Stephens* v. *Cherokee Nation*, *supra*. On March 21, 1902, an agreement was made between the United States and the Choctaw and Chickasaw Nations, which was confirmed by act of Congress July 1, 1902, (32 Stat. 641). This agreement and act were substantially that a court known as the Choctaw and Chickasaw Citizenship Court should be created, and that that court should have power in a suit in equity brought by either or both of these tribes against any ten persons who had been admitted to citizenship or enrollment by the terms of the judgments of the several United States courts in the Indian Territory, as representatives of all persons similarly situated, to determine whether the judgments of those courts should be annulled on account of certain alleged irregularities. The agreement and act also provided that in case the citizenship courts should decide that those judgments should be annulled, the papers in any action in those courts, wherein such a judgment had been rendered, should, upon seasonable

application of either party, be transferred to the citizenship court, which should proceed to a hearing and determination of the question of citizenship. Under this agreement and act the court was established and a test suit brought, in which a decree was entered to the effect that the judgments of the United States courts in the Indian Territory, whereby persons were admitted to citizenship in the Choctaw and Chickasaw Nations under the act of June 10, 1896, were annulled and vacated. Hill was not named a party in that test suit, nor did he thereafter apply for a transfer of his case to the citizenship court. The above statement of facts is sufficiently full for an understanding of the single question presented for determination.

That single question may be divided into two. First, was the decree in the Indian Territory court declaring Hill a citizen a finality, beyond the power of Congress to in any manner disturb? This was answered in the Stephens case (*supra*). In that case we held that Congress could authorize a review of the judgments of the United States courts of the Indian Territory in citizenship cases, and this although, by the terms of prior legislation, those judgments had become final. While sustaining the act authorizing such review and providing for appeals to this court we construed it as limiting the appeals to the question of the constitutionality or validity of the legislation, and not as bringing before us the facts in the instances of all applications for citizenship. In the opinion (page 477) we said:

"The contention is that the act of July 1, 1898, in extending the remedy by appeal to this court was invalid because retrospective, an invasion of the judicial domain and destructive of vested rights. By its terms the act was to operate retrospectively, and as to that it may be observed that while the general rule is that statutes should be so construed as to give them only prospective operation, yet where the language expresses a contrary intention in unequivocal terms the mere fact that the legislation is retroactive does not necessarily render it void.

"And while it is undoubtedly true that legislatures can not set aside the judgments of courts, compel them to grant new trials, order the discharge of offenders or direct what steps shall be taken in the progress of a judicial inquiry, the grant of a new remedy by way of review has been often sustained under particular circumstances. *Calder* v. *Bull*, 3 Dall. 386; *Sampeyreac* v. *United States*, 7 Pet. 222; *Freeborn* v. *Smith*, 2 Wall. 160; *Garrison* v. *New York*, 21 Wall. 196; *Freeland* v. *Williams*, 131 U. S. 405; *Essex Public Board* v. *Skinkle*, 140 U. S. 334.

"The United Sates court in Indian Territory is a legislative court and was authorized to exercise jurisdiction in these citizenship cases as a part of the machinery devised by Congress in the discharge of its duties in respect of these Indian tribes, and assuming that Congress possesses plenary power of legislation in regard to them, subject only to the Constitution of the United States it follows that the validity of remedial legislation of this sort can not be questioned unless in violation of some prohibition of that instrument.

"In its enactment Congress has not attempted to interfere in any way with the judicial department of the Government, nor can the act be properly regarded as destroying any vested right, since the right asserted to be vested is only the exemption of these judgments from review, and the mere expectation of a share in the public lands and moneys of these tribes, if hereafter distributed, if the applicants are admitted to citizenship, can not be held to amount to such an absolute right of property that the original cause of action, which is citizenship or not, is placed by the judgment of a lower court beyond the power of re-examination by a higher court, though subsequently authorized by general law to exercise jurisdiction."

This decision established that no such vested right was created by the proceedings of the Dawes Commission or the judgments of the courts of the Indian Territory on appeal from the findings of the commission as prevented subsequent investigation. The power of Congress over the matter of citizenship in these Indian tribes was plenary, and it could adopt any reasonable means to ascertain who were entitled to its privileges. If the result of one measure was not satisfactory it could try another. The fact that the first provision was by an inquiry in a Territorial court did not exhaust the power of Congress or preclude further investigation. The functions of the Territorial courts in this respect were but little more than those of a commission. While the act of July 1, 1898, provided for an appeal to this court, and appeals were taken in many cases, yet our inquiry stopped with the question of the constitutionality of the legislation. In other words, we entertained and decided the purely judicial question of the validity of the means Congress had adopted for determining the matter of citizenship. We did not attempt to pass upon the question of citizenship in any particular case nor determine whether the applicant was or was not entitled to be enrolled as a citizen. It is unnecessary to consider what would have been the effect of a judgment of this court, a court provided for in the Constitution, on the question of the right of a litigant to citizenship. The distinction between this court and the courts established by act of Congress in virtue of its power to ordain and establish inferior courts is shown in *Gordon* v. *United States*, 117 U. S. 697, in which we held that while Congress could give to the Court of Claims jurisdiction to inquire and report upon claims against the Government, it could not authorize an appeal from such report to this court unless our decision was made a final judgment, not subject to Congressional review. In the opinion Mr. Chief Justice Taney said (pp. 699, 702):

"Congress may undoubtedly establish tribunals with special powers to examine testimony and decide, in the first instance, upon the validity and justice of any claim for money against the United States, subject to the supervision and control of Congress, or a head of any of the executive departments. In this respect the authority of the Court of Claims is like to that of an auditor or comptroller, with this difference only, that in the

latter case the appropriation is made in advance, upon estimates furnished by the different executive departments, of their probable expenses during the ensuing year; and the validity of the claim is decided by the officer appointed by law for that purpose, and the money paid out of the appropriation afterwards made. In the case before us the validity of the claim is to be first decided, and the appropriation made afterwards. But in principle there is no difference between these two special jurisdictions created by acts of Congress for special purposes, and neither of them possess judicial power in the sense in which these words are used in the Constitution. The circumstance that one is called a court and its decisions called judgments can not alter its character nor enlarge its power. . . . Congress can not extend the appellate power of this court beyond the limits prescribed by the Constitution, and can neither confer nor impose on it the duty of hearing and determining an appeal from a commissioner or auditor, or any other tribunal exercising only special powers under an act of Congress; nor can Congress authorize or require this court to express an opinion on a case where its judicial power could not be exercised, and where its judgment would not be final and conclusive upon the rights of the parties, and process of execution awarded to carry it into effect."

This decree was followed by legislation which in a general way provided that the rulings of this court on appeals from the judgments of the Court of Claims should be in effect judgments. While that case is not entirely parallel to this, yet the line of thought pursued in the opinion is suggestive. We do not feel called upon to enlarge upon it. It is enough now to hold that Congress in giving to the Indian Territory courts jurisdiction of appeals from the action of the Dawes Commission did not place the decisions of these courts beyond the reach of further investigation. Hence the act of Congress of July 1, 1902, creating the Choctaw and Chickasaw Citizenship Court, and giving to it power to examine the judgments of the Indian Territory courts and determine whether they should not be annulled on account of irregularities was a valid exercise of power.

The other question is one of procedure and not of power. It is objected that the defendant Hill was not made a party to the proceeding instituted in the citizenship court, but there were a multitude, according to the report of the Dawes Commission, probably one thousand, in whose favor judgments of citizenship had been entered in the Indian Territory courts, and the act provided that ten should be selected as representatives of the class. It further authorized any individual, in case of an adverse judgment by the citizenship court, to transfer his case from the Territorial to that court. Now, it is undoubtedly within the power of a court of equity to name as defendants a few individuals who are in fact the representatives of a large class having a common interest or a common right—a class too large to be all conveniently brought into court—and make the decree effective not merely upon those individuals, but also upon the class represented by them. *Mandeville* v. *Riggs*, 2 Pet. 482; *Smith* v. *Swormstedt*, 16 How. 288; *Bacon*

v. *Robertson*, 18 How. 480, 489; *United States* v. *Old Settlers*, 148 U. S. 427, 480. It was by way of extra precaution and in order to more effectually secure the rights of the individuals other than those named as parties defendant in that suit that Congress provided that any one might transfer his individual case from the Territorial court to the citizenship court, and there have the merits of his claim decided. Hill, as every other citizen, was bound to take notice of the legislation of Congress, and it is not to be doubted that he as well as others similarly situated were cognizant of the proceedings that were being had in pursuance of such legislation. He made no application to transfer his case, but chose to abide by the outcome of the case against the ten representatives of his class. The answers to these subordinate questions fully dispose of the main question. Without further discussion, we refer to the exhaustive opinion of Circuit Judge Sanborn, in delivering the judgment of the Court of Appeals, with which, in the main, we fully concur.

We find no error in the record, and the judgment of the Court of Appeals is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.